IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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C.W.P. No.18794 of 2004
Date of Decision:17.10.2007

Krishna Rani

.....Petitioner

Vs.

The State of Haryana and others

.....Respondents

CORAM:- HON'BLE MR. JUSTICE RAJESH BINDAL

Present:- Mr. Ashish Aggarwal, Advocate for the petitioner.

Mr. Deepak Jindal, AAG, Haryana.

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Rajesh Bindal, J.

The challenge in the present petition is to the impugned order dated 6.8.2004 (Annexure P-3) passed by Sub Registrar, Nilokheri, District Karnal whereby, in exercise of powers under Section 47-A of the Indian Stamp Act, 1899, (for short, `the Act'), the sale deed of the plot in question executed by Tanuj Kumar in favour of the petitioner was impounded and the matter was referred to Collector-cum-Sub Divisional Officer (Civil), Karnal for further adjudication and determination of the correct value of the property for the purpose of payment of stamp duty.

Learned counsel for the petitioner submitted that on 5.12.2001, an agreement was entered into regarding sale of plot No.31, Sector-12 (Part-II) Karnal measuring 307.5 square meters. The sale consideration was fixed at Rs. 3,50,000/-. The entire amount was paid on the date of execution of agreement. After the receipt of the permission from Hayana Urban Development Authority, the sale deed was registered on 4.8.2004 in favour of the petitioner and requisite stamp duty of Rs. 28,000/- was affixed thereon. However, the same was impounded under Section 47-A of the Act by the Sub Registrar on the ground of under valuation on the same day and the matter was referred to the Collector. He further submitted that bare perusal of the impugned order shows that the same has been passed without application of mind as there was no material before the Sub Registrar to

form an opinion that the value of the property, as shown in the sale deed, was not correct. In fact, a perusal of the impugned order shows that there is no application of mind by the competent authority rather the names and figures have been filled up in a blank typed/printed proforma, on which the Sub Registrar signed. Even certain non-applicable terms/ descriptions mentioned in the impugned order have not been deleted. The requirement of Section 47-A of the Act have not been complied with as there are no reasons to believe available on record to show that there is under valuation in the sale consideration. To support his contention, he has relied upon judgments of this Court in the cases of **Mulakh Raj v. State of Haryana and others,** 2001 (1) PLJ 364 and **Chamkaur Singh and another v. State of Punjab,** 1991 PLJ 249.

On the other hand, learned counsel for the respondents submitted that the impugned order clearly shows that the value of the property is not less than Rs. 2,100/- per square yard which is much more than the consideration shown in the sale deed. Further reliance is upon the document annexed as R-1 showing Collector-rates for District Karnal for the year 2004-2005 which provide that in the residential area of Sector 6, 12 and Sector-6 Housing Board rate per square yard was Rs. 2,100/-. On this basis, the submission is that the fact about under valuation of the sale deed is clearly supported by the material available and, accordingly, the impounding of the sale deed was clearly justified.

I have heard Shri Ashish Aggarwal, Advocate for the petitioner and Shri Deepak Jindal, Assistant Advocate General, Haryana for the respondents and perused the paper book with their assistance.

The relevant provisions of Section 47-A of the Act are extracted below:-

"**47-A. Instruments under-valued how to be dealt with** -

(1) If the Registering Officer appointed under the Registration Act, 1908, while registering any instrument transferring any property has reason to believe that the value of the property or the consideration, as the case may be, has not been truly set forth in the instrument, he may, after registering such instrument, refer the same to the Collector for determination of the value or

consideration, as the case may be, and the proper duty payable thereon.

(2) On receipt of reference under sub-section (1), the Collector shall, after giving the parties a reasonable opportunity of being heard and after holding an enquiry in such manner as may be prescribed by rules made under this Act, determine the value or consideration and the duty as aforesaid and the deficient amount of duty, if any, shall be payable by the person liable to pay the duty.

(3) The Collector may suo motu, or on receipt of reference from the Inspector – General of Registration or the Registrar of a district in whose jurisdiction the property or any portion thereof which is the subject-matter of the instrument is situate, appointed under the Registration Act, 1908, shall, within three years from the date of registration of any instrument, not already referred to him under sub-section (1), call for and examine the instrument for the purpose of satisfying himself as to the correctness of its value or consideration, as the case may be, and the duty payable thereon and if after such examination, he has reasons to believe that the value or consideration has not been truly set forth in the instrument, he may determine the value or consideration and the duty as aforesaid in accordance with the procedure provided for in sub-section (2); and the deficient amount of duty, if any, shall be payable by the person liable to pay the duty;

Provided that the Collector shall, within a period of two years from the date of the commencement of the Indian Stamp (Haryana Amendment) Act, 1973, also be competent to act as aforesaid in respect of the instruments registered on or after the first day of November, 1966 and before the first day of October, 1970.

(4) Any person aggrieved by an order of the Collector

> under sub-section (2) or sub-section (3) may, within thirty days from the date of the order, prefer an appeal before the Commissioner of the Division and all such appeals shall be heard and disposed of in such manner as may be prescribed by rules made under this Act."

A bare perusal of the language of Section 47-A of the Act, as extracted above, shows that in case the Registering Officer has reason to believe that the value of the property or consideration, as the case may be, has not been truly set forth in the instrument, he can after registering the instrument refer the same to the Collector for determination of correct value thereof.

The term `reason to believe' forms part of many statutes wherever action is taken against a person and while explaining the same in **Dr. Partap Singh and another v. Director of Enforcement, Foreign Exchange Regulation Act and others,** AIR 1985 SC 989, Hon'ble the Supreme Court opined as under:-

> "The expression `reason to believe' is not synonymous with subjective satisfaction of the officer. The belief must be held in good faith; it cannot be merely a pretence. In the same case, it was held that it is open to the court to examine the question whether the reasons for the belief have a rational connection or a relevant bearing to the formation of the belief and are not extraneous or irrelevant to the purpose of the section. To this limited extent the action of the Income tax Officer in starting proceedings under Sec.34 is open to challenge in a court of law. (See Calcutta Discount Co. Ltd. v. Income-tax Officer Companies District I, Calcutta 41 ITR 191: AIR 1961 SC 372)."

Even the issue regarding recording of reasons and formation of opinion under Section 47-A of the Act has been considered by a Division Bench of this Court in **Mulakh Raj's case (supra)** wherein relying upon earlier Division Bench judgment of this Court in **Chamkaur Singh's case (supra)**, it was held as under:-

> "15. The question which remains to be considered is whether the orders of reference deserve to be quashed on the

ground of non-application of mind and non-compliance of the conditions embodied in Section 47-A(1). A look at one of such orders (which has been placed as Annexure P.6 on the record of C.W.P. No.5406 of 1999) shows that after registering the document, respondent No.3 made reference to respondent No.2 by making the following observations:

"The prevailing rate of this area is not less than Rs. 4,00,000/- per acre and according to this, the price of the land comes to Rs. 6,60,000/- and according to which the above sale deed has been registered with a less value of Rs. 3,30,000/-."

16. On the face of it, the above quoted observations do not give any indication of the material which was considered by respondent No.3 for forming an opinion that the sale deeds had been under-valued. The respondents have tried to supply this omission by making a statement in the counter-affidavit that respondent No.3 had made enquiries regarding the market value of the land in the area. If it could be proved that respondent No.3 did make enquiries about the market value of the land in the area, we may have upheld the orders of reference notwithstanding the fact that mention of such enquiries has not been made therein. However, as the respondents have not produced any document to substantiate the assertion made in the written statements, we are inclined to agree with the learned counsel for the petitioners that the orders of reference were passed without application of mind and they are liable to be quashed being *ultra vires* to Section 47-A(1) of the 1899 Act (as applicable to the State of Haryana).

17. For the reasons mentioned above, the writ petitions are allowed. Orders of reference passed by respondent No.3 are declared illegal with the direction that within 2 months of the receipt of copy of this order, he shall pass

> fresh order after considering the material relevant for forming an opinion that the price mentioned in the sale deeds is less than the market value of such land. However, it is made clear that any observation made in this order shall not be construed as an impediment in the making of fresh order of reference. We further direct that the sale deeds shall not be released till the passing of fresh order by respondent No.3 and if he decides to make reference under Section 47-A(1) of the 1899 Act, then the instruments shall not be released till the final determination is made by respondent No.2."
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> (emphasis supplied)

If the principles of law as enunciated in above referred judgments are applied to the facts and circumstances of the present case, it would be evident that the reasons recorded by the Sub-Registrar while impounding the sale deed under Section 47-A of the Act and referring the same to the Collector, is nothing else but a mechanical exercise carried out by the authority concerned with no application of mind as no material has been referred to form an opinion that the sale deed is under valued. The relevant part of the impugned order is extracted below:-

> "Shri Tanuj Kumar son/daughter/wife Shri Krishan Lal resident of B-47, Gol Talab, Nilokheri has executed Sale Deed of Plot/ House/ Shop/ Land situated in Sector 12, Tehsil Karnal, District Karnal of area measuring 367.77 Sq. yards in favour of Krishna Rani son/daughter/wife of Shri Gian Chand, resident of 37-A, Neel Nagar, Nilokheri, Tehsil and District Karnal. The prevailing rate of the above land seems to be less than Rs. 2100/- per sq. yard and according to which the price of the land comes to Rs. 7,72,320/-. Whereas, the Deed has been registered for Rs. 3,50,000/- and on the basis of which, this Deed has been registered for an amount which is less by Rs. 4,22,320/-. Due to this there has been a loss of stamp duty of Rs. 38,010/-."

(underlined portion in the extracted portion shows the blank columns which were filled up and rest of the proforma was printed)

The formation of opinion by the Sub-Registrar is only tentative while opining that the prevailing rate seems to be less than Rs. 2,100/- per square yard. No material on record has been referred to form such an opinion. Rather filling of blanks in printed proforma shows that there was no application of mind by the authority concerned to the facts of the case in hand. This makes it a case of no reasons being on record to form an opinion and not that the reasons were not sufficient.

In the reply filed, the impugned order is sought to be justified by placing reliance on rates of Collector, District Karnal for the year 2004-2005. Besides that there is no material relied upon or referred to in the written statement also to justify the impounding of sale deed on the allegation of under valuation. The same has also to be merely considered and rejected as the same is not mentioned or relied upon while passing the impugned order which is nothing more than a mechanical exercise wherein certain columns have been filled up in a blank proforma. A Constitution Bench of Hon'ble the Supreme Court in **Mohinder Singh Gill and another v. The Chief Election Commissioner, New Delhi and others,** (1978) 1 SCC 405, has held that:

> "The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji:
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> Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order

itself.

Orders are not like old wine becoming better as they grow older."

The same view was reiterated in **R.S.Garg Vs. State of U.P. and others (2006) 6 Supreme Court Cases 430** and **Hindustan Petroleum Corpn. Ltd. Vs. Darius Shapur Chenai and others (2005) 7 Supreme Court Cases 627.**

Even otherwise as to whether solely the rates fixed by the Collector could be relied upon for the purpose of exercise of powers by the Sub-Registrar under Section 47 of the Act, the enunciation of Hon'ble the Supreme Court in **State of Punjab and others v. Mahabir Singh etc.,** AIR 1996 SC 2994 are already available wherein it is held as under:-

"Sub-section (1) of Section 47-A empowers the Registering Officer, while registering any instrument relating to the transfer of any property, if he has reasons to believe that the value of the property or consideration, as the case may be, has not been truly set forth in the instrument, after registering such instrument, to refer the same to the Collector for determination of the value of the property or the consideration, as the case may be, and the proper duty payable thereon. It would, therefore, be clear that the Registering Authority has to satisfy himself that value of the property or the consideration for it has not been truly set forth in the instrument. He may make a reference to the Collector in accordance with the provisions of sub-section (2) of Section 47-A. Before making reference, he is required to register the document and he is not empowered to withhold the registration. Such a registration, of course, will be subject to the determination of the true market value prevailing in the locality though the value mentioned in the instrument for such registration under sub-section (1) of Section 47-A was not conclusive.

The guidelines provided by the State would only serve as prima facie material available before the Registering Authority to alter him regarding the value. It is common knowledge that the value of the property varies from place to place or even

> from locality to locality in the same place. No absolute higher or minimum value can be pre-determined. It would depend on prevailing prices in the locality in which the land covered by the instrument is situated. It will be only an objective satisfaction that the Authority has to reach a reasonable belief that the instrument relating to the transfer of property has not been truly set forth or valued or consideration mentioned when it is presented for registration. The ultimate decision would be with the Collector subject to the decision on an appeal before the District Court as provided under sub-section (4) of Section 47-A.
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> It would, thus, be seen that the aforesaid guidelines would inhibit the Registering Authority to exercise his quasi-judicial satisfaction of the true value of the property or consideration reflected in the instrument presented before him for registration. The statutory language clearly indicates that as and when such an instrument is presented for registration, the Sub-Registrar is required to satisfy himself before registering the document, whether true price is reflected in the instrument as it prevails in the locality. If he is so satisfied, he registers the document. If he is not satisfied that the market value or the consideration has been truly set forth in the instrument, subject to his making reference under sub-section (1) of Section 47-A, he registers the document. Thereafter, he should make a reference to the Collector for action under sub-sections (2) and (3) of Section 47-A."
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> (emphasis supplied)

Keeping in view the enunciation of law in the cases referred to above and applying the same to the facts of the present case, it is evident that no material has been referred to by the Sub-Registrar while impounding the sale deed which could enable him to form an opinion that the consideration mentioned in the sale deed was under valued. The impugned order/communication is merely a printed proforma wherein certain blank columns were filled in which further shows total non application of mind and what is evident is mere clerical/ mechanical exercise.

Accordingly, the writ petition is allowed, the impugned order of reference passed by respondent No.3 is set aside and a direction is issued to him to pass a fresh order after considering the material relevant for forming an opinion to the effect that the consideration mentioned in the sale deed is less than the market value of the property. The fresh order be passed within two months from the date of receipt of a copy of this order. It is made clear that in case ultimately it is found that the consideration mentioned in the sale deed was less than the market value of the property, the difference of stamp duty shall remain as first charge on the property in question.

The writ petition is disposed of in the manner indicated above.

October 17, 2007 **(RAJESH BINDAL)**
renu/Pka **JUDGE**

(Refer to Reporter)